

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
CASE № 18-80102-CR-ROSENBERG

UNITED STATES OF AMERICA,

*Plaintiff,*

v.

MARK JEFFREY HOLLANDER,

*Defendant.*

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**SENTENCING MEMORANDUM**  
**AND INCORPORATED MEMORANDUM OF LAW**

The Defendant, **MARK HOLLANDER**, through undersigned counsel, respectfully submits this Sentencing Memorandum, pursuant to 18 U.S.C. § 3553(a), and *United States v. Booker*, 543 U.S. 220 (2005) and its progeny. In support hereof, **MR. HOLLANDER** submits the following:

I.  
**INTRODUCTION**

The PSR recommends the guideline range agreed upon by the parties of a level 18 and a sentencing range of 27 to 33 months. Although the parties have agreed to recommend a sentence at the low end of the guidelines, it is imperative that the Court have a full picture of **MR. HOLLANDER**, his background, his conduct in this case, and the comparable culpability of his co-defendants before deciding upon the appropriate sentence for him.

[H]ighly relevant – if not essential – to the selection of an appropriate sentence is the possession of the fullest information possible concerning the defendant's life and characteristics. *Pepper v. United States*, 562 U.S. 476, 488 (2011) (citing *Williams v.*

*New York*, 337 U.S. 241, 247 (1949)). Consideration of the widest breath of information ensures that the punishment will suit not merely the offense *but the individual defendant*. *Id.*; (citing *Wasman v. United States*, 468 U.S. 559, 564 (1984)) (emphasis added).

This sentencing memorandum serves to show why we believe a low end of the guideline recommendation is more than warranted in this case.

It has been uniform and constant in the federal judicial tradition for the sentencing judge to consider every convicted person as an individual and every case as a unique study in the human failings that sometimes mitigate, sometimes magnify, the crime and the punishment to ensue.

*Pepper*, 562 U.S. at 487. In imposing a sentence “sufficient, but not greater than necessary” the district court must consider the nature and circumstances of the offense, the history and characteristics of the defendant, the kinds of sentences available, the applicable guideline range, the pertinent policy statement of the Sentencing Commission, the need to avoid unwarranted sentencing disparities, and the need to provide restitution to victims. *United States v. Campo*, 695 Fed.Appx. 453, 458 (11th Cir. 2017) (citing 18 U.S.C. § 3553(a)(1)-(7)). We will not burden the Court with the law relating to *Booker*, instead, we will focus only on the 3553(a) factors relevant to **MR. HOLLANDER**.

## II.

### **HISTORY AND CHARACTERISTICS OF MR. HOLLANDER**

**MR. HOLLANDER**, age forty-four (44), was born in Miami, Florida. **MR. HOLLANDER** recognizes that he is very fortunate because his childhood was filled with an immense amount of love and support from both his parents. He has two (2) siblings, David Hollander, age forty-six (46), and Lauren Weider, age thirty-six (36). **MR. HOLLANDER** was extremely close to his father, Michael Hollander, who was an accountant with his own accounting practice. **MR. HOLLANDER** recalls spending most of his childhood in his father’s

office learning accounting and real estate. **MR. HOLLANDER** spent his weekends with his father fishing, riding road bikes – a passion they both shared – and learning about history. The two (2) were inseparable. He describes his father as his mentor and hero growing up and remembers wanting nothing more than to work with his father in their own accounting firm. Unfortunately, his dream of working alongside his hero and best friend was abruptly crushed when his father unexpectedly died at the young age of fifty (50).

At age forty-six (46), **MR. HOLLANDER'S** father was diagnosed with hemochromatosis. Complications of hemochromatosis caused a node in his father's heart, which controlled the electrical functioning of the heart, to burn out. In September of 1997, **MR. HOLLANDER'S** father's defective heart caused him to faint at his office. **MR. HOLLANDER'S** father was immediately rushed to the hospital and eventually discharged with a heart monitor. Sadly, just days after being discharged from the hospital, **MR. HOLLANDER'S** father made a joke to his wife, grabbed his chest and suffered a fatal heart attack. **MR. HOLLANDER** was the first person his mother called with the devastating news. **MR. HOLLANDER** rushed to the hospital where he witnessed the doctors and nurses try to save his father's life – an image that remains with him today.

**MR. HOLLANDER** selflessly and enthusiastically put his own life on hold to take care of his family like his father before him. At just twenty-two (22) years of age, **MR. HOLLANDER** became the patriarch of the family because his older brother moved to Boca Raton during this time period. He also turned into a father figure to his sister, who was just sixteen (16) years old when their father passed away. **MR. HOLLANDER** recalls guiding his younger sister through the college application process and when she finally chose and was admitted to the University of Texas, he took her to orientation and helped her

settle into her new college dormitory, a ritual he repeated every year she attended college. He also assumed the role of taking care of his mother's needs, both emotional and financial. The main reason why **MR. HOLLANDER** waited to start his own family was because his priority was always his mother and sister. Now that his mother has found a life partner and his sister is married with children, he was finally ready to have a family of his own but decided to wait until this case was resolved. That plan changed when his fiancé, Tziyona Cohen, recently became pregnant.

**MR. HOLLANDER** took over his father's accounting firm upon his passing. He worked tirelessly to make his father proud and eventually built his own successful practice from the foundation his dad started decades earlier. One of the hardest parts of this case for **MR. HOLLANDER** has been knowing that his conduct herein would have been a grave disappointment to his father.

Up to his involvement in the instant offense, **MR. HOLLANDER** lived a law-abiding life and always strived to help others. He is currently actively involved in the American Society for the Prevention of Cruelty to Animals (ASPCA), the Rok Family Shul – Chabad Downtown Jewish Center, and Friends of the Israel Defense Forces (FIDF). He also provides support and donates money to a scholarship fund for children whose fathers cannot provide for them due to illness, incapacity, or death.

### III. **PHYSICAL CONDITION OF MR. HOLLANDER**

Pursuant to § 5H1.4 of the Sentencing Guidelines,

[p]hysical condition . . . may be relevant in determining whether a departure is warranted, if the condition . . . individually or in combination with other offender characteristics, is present to an unusual degree and distinguishes the case from the typical cases covered by the

guidelines. An extraordinary physical impairment may be reason to depart downward; e.g., in the case of a seriously infirmed defendant, home detention may be as efficient as, and less costly than, imprisonment.

**MR. HOLLANDER** suffers from a multitude of serious physical ailments, which distinguish him from the typical cases covered by the guidelines. Any one of the conditions from which he suffers might ordinarily require a variance from the guidelines, but the combination of all of his maladies speaks forcefully for one.

**MR. HOLLANDER** was diagnosed with hemochromatosis, the same rare iron disorder that contributed to his father's early death. Hemochromatosis is a genetic disorder that causes the body to absorb too much iron, which can poison the organs and lead to life-threatening conditions such as cancer, liver disease, heart problems, and diabetes. As part of his treatment for this disease, **MR. HOLLANDER** must get his blood checked three (3) to four (4) times per month and must regularly have blood drawn from his body, thereby eliminating iron buildup in his system.

At the present time, **MR. HOLLANDER'S** kidneys are in near renal failure and he is at risk of requiring dialysis treatments. Consequently, he must have his kidneys checked two (2) to three (3) times per quarter to make sure he is not in renal failure. **MR. HOLLANDER'S** kidney disease causes him to suffer from extreme fatigue and requires him to follow a strict low sodium diet. He is also required to drink water constantly.

**MR. HOLLANDER** also suffers from a first-degree atrioventricular block in his heart (hereinafter "AV block"). An AV block is a disease of the electrical conduction system of the heart. Due to his family's extensive history of heart disease, **MR. HOLLANDERS'** first degree block will most probably upgrade to a second-degree AV block requiring either a

defibrillator and/or a heart transplant. Unfortunately, if and when this will occur is unknown and **MR. HOLLANDER** must live with this uncertainty.

As if he was not suffering from enough medically-related problems, **MR. HOLLANDER** was viciously attacked by a dog in August 2018. He contracted *Pasteurella multocida* bacteremia from the dog bite to his hand and the bacterial infection travelled through much of his body until treated with heavy doses of antibiotics. **MR. HOLLANDER** sustained several other injuries during the attack, including a torn rotator cuff and four (4) herniated discs in his spine, which recently required surgery. Even though the surgery was “partially successful,” **MR. HOLLANDER’S** treating physician believes that he will have less than one hundred (100%) percent mobility, and will likely suffer from chronic back pain as a result. He has also had to undergo surgery to repair damage to his right hand and faces the prospect of additional back and hand surgeries. He is currently scheduled to have surgery to repair his torn rotator cuff.

At the present time, **MR. HOLLANDER** is very ill with a host of maladies, some life threatening and some potentially debilitating, but all of which require close monitoring and specialized medical care. For **MR. HOLLANDER**, not receiving the proper medical care quite literally means the difference between life and death.

#### IV. **SENTENCING DISPARITY BETWEEN CO-DEFENDANT’S**

In considering the § 3553(a) factors, the district court should avoid unwarranted sentence disparities among defendants with “similar records who have been found guilty of similar conduct.” *United States v. Walker*, 578 Fed.Appx. 812, 819 (11th Cir. 2014); 18 U.S.C. § 3553(a)(6). In doing so, the district court should look to see if the co-

defendants are similarly situated. *Id.* To be similarly situated, co-defendants must have similar backgrounds and criminal histories. *Id.*

Unfortunately, a comparison of the defendants in related cases in this matter, reveals disparate treatment and outcomes that the Court should consider. Perhaps the best example of this is with respect to Lawrence Weisberg (hereinafter “Mr. Weisberg”) who the government contends is similarly situated with **MR. HOLLANDER**. Although the government filed a motion certifying Mr. Weisberg’s substantial assistance, government counsel rewarded him with a significant guideline reduction by not holding him accountable for the *full* amount of money he retained from the instant scheme.

In the PSR, the government posited that both **MR. HOLLANDER** and Mr. Weisberg had the *exact* same role. The major distinguishing factor between them, as it pertains to their sentencing guidelines calculation, is the loss amount allocated to them by the government. Although Mr. Weisberg retained approximately \$277,585.61 from Smart Lab for his own personal benefit, he was only held accountable for a loss amount of between \$95,000 and \$150,000 under § 2B1.1 of the sentencing guidelines. Thus, by not holding Mr. Weisberg accountable for the full amount of money he retained in the instant offense, the government reduced Mr. Weisberg’s base offense level by four (4) points, *i.e.*, *twelve months*. Unlike Mr. Weisberg, **MR. HOLLANDER** is being held accountable for the *full* amount of funds he retained for his own personal benefit, thus putting him at a loss amount of more than \$250,000 and less than \$500,000 under § 2B1.1 of the sentencing guidelines. Given their similar roles in the instant offense, we respectfully suggest that any sentence disparity between Mr. Weisberg and **MR. HOLLANDER** is unwarranted.

In fact, we believe that Mr. Weisberg's role in the offense is significantly more egregious than **MR. HOLLANDER'S** because there is evidence that Mr. Weisberg used his special skill as an attorney to facilitate the instant offense. Mr. Weisberg served as the "go-between" for Smart Lab and Lanny Fried. In so doing, Mr. Weisberg aided Mr. Fried in avoiding tax liens and restitution obligations. The government said as much in the Government's Response to Defendant Weisberg's Objections to the Pre-Sentence Investigation Report (DE 40), having stated that "given that Mr. Weisberg was a member of the bar, his decision to involve himself with Mr. Fried and this scheme was more significant." While both Mr. Weisberg and **MR. HOLLANDER** served the same purpose in the scheme – funneling funds from Smart Lab to Mr. Fried and others – Mr. Weisberg's actions are markedly more repugnant, as they were in direct contradiction to his obligations as a member of the Bar. As an officer of the court, Mr. Weisberg's assistance to others in violating the law is reprehensible. Nevertheless, the government agreed to omit this enhancement from Mr. Weisberg's plea agreement by not including an enhancement for his use of a special skill to facilitate the offense. By this omission and the reduced loss amount, Mr. Weisberg's guidelines were effectively reduced by six (6) levels before the government filed its U.S.S.G § 5K1.1 motion.

By contrast, **MR. HOLLANDER** did not use any special skill in his involvement in this case, and none was assessed. Mr. Weisberg was sentenced to a six (6) month term of imprisonment, despite the advisory guideline range adopted by the Court, the low end of which was twelve (12) months.

In another related case, Tina Barbuto, who was responsible for multiple egregious acts, provided unprescribed medications to patients that did not need them solely for the



purpose of generating income from private insurance companies. Ms. Barbuto and the government agreed that she caused false billings of \$3,132,806.13. Ms. Barbuto was responsible for billing various insurance plans for expensive and unnecessary testing, knowing that patients were not present and did not provide blood or urine samples for testing, the purported basis for the prescriptions. Despite her important role in bilking insurance companies of up to \$3.1 million, Ms. Barbuto was shown leniency due to her individual circumstances, including her diminished capacity. She was sentenced to thirty-six (36) months.

On November 1, 2018, two (2) of the owners of Smart Lab, Justin Wayne and Hamilton "Hawkeye" Wayne, a.k.a. the ringleaders in this scheme, were sentenced to forty-six (46) months and sixty-three (63) months, respectively. **MR. HOLLANDER'S** role in the instant offense is dramatically less than the very architects of the criminal activity at issue here. The Wayne brothers were the leaders of the scheme, yet Justin Wayne was sentenced to just eighteen (18) months more than the bottom of **MR. HOLLANDER'S** guideline range. While we do not know if the government will file a motion for downward departure further reducing the sentences of Justin and Hawkeye, both Wayne brothers' sentences are already too close to the guideline sentence recommended by the parties for **MR. HOLLANDER**, who had a much less significant role in the instant offense.

In the case of the third Wayne brother and managing member of Smart Lab, Ethan Wayne, the government showed extreme leniency. Ethan Wayne, like Mr. Weisberg, is an attorney, who shirked the ethical and legal responsibilities imposed upon him as a lawyer when he approved an \$85,000 payout of outstanding insurance funds. The advisory guideline range suggested a sentence of 12-18 months. However, the court

granted a *significant* downward departure at the request of the government, pursuant to its § 5K1.1 motion, resulting in three (3) years of probation and an eight (8) month term of home confinement. While Ethan Wayne's familial obligations are unique and demanding, deserving of a downward variance, it must not be overlooked that the government showed sympathy for extraordinary health and family circumstances in all cases but one: **MR. HOLLANDER'S**.

At Kenneth Chatman's sentencing, the government admitted to omitting some of Mr. Chatman's acts, simply because of how unprecedented his case was, charging both Medicare fraud and human trafficking. The government went on to say that Mr. Chatman was actually lucky to have been charged for both crimes in a single indictment, because if the charges had been indicted separately, he could have faced consecutive sentences. By virtue of acknowledging what could have been Mr. Chatman's fate, the government implicitly admitted to carving out *years*, potentially even decades, from Mr. Chatman's sentence by only charging him with a single indictment. Yet again, a defendant in a related case benefited from the government's seemingly arbitrary generosity, a benefit that has not been granted to **MR. HOLLANDER**.

Based on the Sentencing Guidelines, and taking into account the role each co-defendant played in the instant cause, it is abundantly clear that in most cases, they were offered *significant* reductions by the government in their respective plea agreements, which ultimately resulted in unfair disparate sentences.

DEFENDANT	BRIEF DESCRIPTION OF ROLE	PLEA AGREEMENT CALCULATIONS	ACTUAL SENTENCE	MORE OR LESS CULPABLE
BARBUTO, TINA	Prepared and submitted false statements to DCF, caused expensive and unnecessary	51-63 months	36 months	<b>More</b>

	testing, participated in the prescription of controlled substances to patients, and condoned/knew of fraudulent insurance claims.	Government requested 36 months		
CHATMAN, KENNY	Major role in conspiracy, paid kickbacks and bribes to sober home owners and patients, major participant in human trafficking scheme, and responsible for a loss of \$9.5 million to \$25 million.	168-210 months	330 months	<b>More</b> Leader of scheme
DAVIS, FRANCESIA	Reflections employee, knew of health care fraud, distributed controlled substance, stole from patients, facilitated human trafficking, and was responsible for a loss of \$3.5 million to \$9.5 million.	70-87 months  Government requested 70 months	84 months	<b>More</b>  Directly involved in fraud and human trafficking
FRIED, LANNY	Facilitated transactions between Reflections and Smart Lab, accepted bribes and kickbacks, recruited others to participate in scheme, and instructed others on depositing payments from Smart Lab, responsible for laundered funds totaling \$1,833,127.92.	46-57 months  Government requested low-end of guideline range	57 months	<b>More</b>  Organizer/ Manager of scheme
VEGA, BOSCO	Received \$244,338.88 in commissions from Smart Lab	21-27 months (assuming Criminal History I)	Pending	<b>Similar</b>
WAYNE, ETHAN	Managing member of Smart Lab who approved kickback payments to sales representatives, responsible for \$85,000 of laundered funds	12-18 months  Government requested low-end of guideline range	3 years probation,  8 months house arrest	<b>More</b>  Approved kickback
WAYNE, JUSTIN	Responsible for \$2.8 million in health care fraud payments to Smart Lab	46-57 months  Government requested low-end of guideline range	46 months	<b>More</b>  Manager of scheme
WAYNE, HAWKEYE	Responsible for \$2.8 million in health care fraud payments to Smart Lab, and received	63 – 78 months  Government requested low-	63 months	<b>More</b>

	\$954,343.99 in kickback payments.	end of the guideline		Organizer/ Leader of scheme
WEISBERG, LAWRENCE	Retained \$277,585.61 from commissions, but was only held responsible for \$95,000 to \$150,000.	15-21 months  Government requested low-end of the guideline	6 months	<b>More</b>

As evidenced by the information found in the chart above, the government has been very lenient with some defendants, and *extremely* generous in the case of Mr. Weisberg, specifically. Considering each defendant's role in comparison to **MR. HOLLANDER'S** role, and the deals they each made in their respective plea agreements, it does raise the specter that he has received disparate treatment.

While we are bound by **MR. HOLLANDER'S** plea agreement to request a sentence at the bottom of the guidelines, we are likewise obligated to bring all factors that may impact his sentence before the Court pursuant to 18 U.S.C. § 3553(a).

**V.**

**MR. HOLLANDER'S COOPERATION AND EXTRAORDINARY ACCEPTANCE OF RESPONSIBILITY**

At the onset, **MR. HOLLANDER** chose to forego a trial so that he could admit guilt and accept responsibility for his actions, thereby saving the government and the Court significant time and resources. He also endeavored to cooperate with the government. Although the government and the undersigned disagree about the value of **MR. HOLLANDER'S** cooperation, it is undisputed that he began cooperating with the government before being charged with any crime (more than two (2) years ago), and he voluntarily participated in approximately five (5) lengthy debriefings. During this time, **MR. HOLLANDER** also provided the government with an extensive trove of documents.

While we take no issue with the fact that the government has the sole authority and discretion to decide who and when an individual has provided substantial assistance sufficient to merit a motion seeking a reduction for same, we want the Court to know that **MR. HOLLANDER** expressed his intention to accept responsibility very early in this case and attempted to cooperate, but did not do so to the government's satisfaction.

**MR. HOLLANDER** has already made full restitution as agreed to in his plea agreement.

VI.  
**NO LIKELIHOOD OF RECIDIVISM**

The Eleventh Circuit discussed the likelihood of recidivating in *United States v. Clay*, 483 F.3d 739 (11th Cir. 2007). There, the district court sentenced the defendant to 60 months even though his guidelines were 188-235 based on the district court's view that the defendant was not likely to reoffend. The Eleventh Circuit stressed that a sentencing court is "require[d] . . . to consider characteristics of the defendant and the offense that make it more or less likely that the defendant will reoffend." *Id.* at 745. Because the defendant in that case had "fundamentally changed since his offense" and "poses a lesser risk to the community," the sentencing court was correct in issuing a variance. *Id.* at 746. See also *Gall v. United States*, 552 U.S. 38, 57-59 (2007); *United States v. Polendo-Diaz*, 2008 WL 2367243 (D.N.M. 2008) (district court granted substantial downward variance – 18 months from 41-51 month range – when considering the passage of time in between violence offense increasing guidelines and sentencing along with the defendant's low risk of recidivism); *United States v. Cherry*, 487 F.3d 366, 369-70 (6th Cir. 2007) (granting 43% downward variance from the guideline range where the defendant presented a low risk to reoffend); *Prosperi*, 686 F.3d 32, 48 (1st Cir. 2012)

(affirming large downward variance where district court considered that there was no risk of recidivism on the part of the defendants when fashioning the non-incarcerative sentence).

**MR. HOLLANDER** is a first time non-violent offender who is forty-four (44) years old and has never had any contact with the criminal justice system. The fact that he has absolutely no prior arrests at his age distinguishes him from other defendants who fall within a criminal history category of I who have prior arrests and even convictions. See *United States v. Nidal Ahmed Waked Hatum*, Case № 15-20189-Cr-Scola. **MR. HOLLANDER** is an educated person. Upon completion of his sentence, **MR. HOLLANDER** intends to find gainful employment, work hard, and seek to regain his good name and reputation. Not to be overlooked, he intends to raise his unborn child, and serve as a strong and positive father figure, as his father served for him years ago. He also has a strong network of supportive family and friends. These characteristics support the conclusion that **MR. HOLLANDER** poses no risk of recidivism.

#### VII.

#### **MR. HOLLANDER'S HISTORY OF SUBSTANCE ABUSE AND REQUEST FOR RDAP**

**MR. HOLLANDER** has a recent history of alcohol abuse. He has been abusing alcohol on a daily basis to cope with the stress of this case for approximately two (2) years. Due to **MR. HOLLANDER'S** alcohol addiction, he would benefit greatly from the RDAP program offered by the Federal Bureau of Prisons.

**VIII.**  
**CONCLUSION**

We believe that, taken on their own, any one of the above 3553 factors provide support for a low end of the guideline sentence in this case and together they provide more than sufficient support for same. Therefore, we respectfully request this Court to sentence **MR. HOLLANDER** to no more than twenty-seven (27) months, as agreed to in the plea agreement, or to whatever sentence this Court finds appropriate for **MR. HOLLANDER** given the above facts and circumstances.

Respectfully submitted,

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*s/ Samuel J. Rabin, Jr.*

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 8th day of January 2019, a true and correct copy of the foregoing Sentencing Memorandum was furnished via the CM/ECF system to all parties designated to receive the electronic filings in this cause.

*s/ Samuel J. Rabin, Jr.*

SAMUEL J. RABIN, JR.